

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Abingdon Division**

WILLIAM D. CARMACK,

Plaintiff,

v.

COMMONWEALTH OF VIRGINIA, *et al.*,

Defendants.

Civil Action No. 1:18-cv-31

DECLARATION OF MICHAEL MAUL

I, Michael Maul, hereby declare and state as follows:

1. I am the Associate Director of the Education and Transportation Division with the Virginia Department of Planning and Budget (“DPB”), a position I have held for twenty-two years. In that role, I advise state agencies on policy, program, legislative and budget issues, including developing and executing budgets, and the capital outlay budget process.
2. I became involved in a proposal to implement the Workforce Transition Act (“WTA”) at the Southwest Virginia Higher Education Center (“Center”). If an individual impacted by a WTA plan chooses enhanced retirement options, the Virginia Retirement System (“VRS”) may absorb those costs instead of the agency. However, prior approval by the director of DPB and the director of the Department of Human Resource Management (DHRM) is required for this type of WTA proposal. Because this type of WTA proposal will save money, a state agency has a strong incentive to request DPB and DHRM approval, as well as seek guidance on the approval process.
3. I met with the Executive Director of the Center, David Matlock, in person during or before February 2017 to review the steps needed to implement the WTA in order for VRS to absorb the

cost of enhanced retirement options available under the WTA. Matlock discussed eliminating the position of Chief Financial Officer, a decision which I noted could be implemented under WTA as long as the position was not refilled with someone performing the same duties. The responsibilities of the Chief Financial Officer could be shifted to another position already in existence, however.

4. During or before May 2017, I spoke by phone with Matlock and Adam Tolbert of the Center, accompanied by Adam Henken, a Budget and Policy Analyst with DPB, to verify the requirements for the Center to request an exemption from paying the enhanced retirement costs under the WTA.

5. On November 13, 2017, my office received the WTA Exemption Request from Matlock along with a summary of his proposed plan. A true and accurate copy of the WTA Exemption Request, SWVHEC004160-004164, has been attached hereto as **Exhibit 1**.

6. My office and I reviewed the WTA proposal to ensure it contained the statutory requirements necessary to allow VRS to absorb the cost of the enhanced retirement options. We also reviewed the timing of the WTA proposal. The timing of the WTA request had to be consistent with a budget cut or reorganization plan. Because the Center had been mandated by the General Assembly and Governor of Virginia to enact budget reductions for fiscal years 2017 and 2018, we were satisfied that Matlock's WTA proposal was proper.

7. DPB Director, Daniel Timberlake, provided Matlock with a signed letter approving Matlock's WTA proposal if the director of DHRM also approved the proposal. A true and accurate copy of the DPB approval letter, SWVHEC12378-12379, has been attached hereto as **Exhibit 2**.

I declare under penalty of perjury that the laws of the United States of America that the foregoing is true and correct. Executed on this 3rd day of April, 2019.

Michael S. Maul

Michael Maul

Exhibit 1

WTA Request for SW Virginia Higher Education Center - Abingdon, VA

From: David Matlock <dmatlock@swcenter.edu>
To: "Wilson, Sara R. (DHRM)" <sara.wilson@dhrm.virginia.gov>, dan.timberlake@dpb.virginia.gov
Cc: "Henken, Adam (DPB)" <adam.henken@dpb.virginia.gov>, "Maul, Michael (DPB)" <michael.maul@dpb.virginia.gov>, David Matlock <dmatlock@swcenter.edu>
Date: Mon, 13 Nov 2017 15:26:23 -0500
Attachments: WTA Memo Nov 2017.pdf (246.37 kB); WTA FINAL 1.pdf (330.89 kB)

Attached is a WTA Exemption Request for the Southwest Virginia Higher Education Center along with a summary of our proposed plan. This plan was approved by the executive committee of the Southwest Virginia Higher Education Center's Board of Trustees and will allow this agency to increase efficiency of operations while addressing budget shortfalls. Please let me know if you have any questions or need additional information. Thank you for your help.



David N. Matlock

Executive Director and Agency Head
Southwest Virginia Higher Education Center
One Partnership Circle
PO Box 1987
Abingdon, VA 24212
Office: (276) 619-4305 • Fax: (276) 619-4309
Email: dmatlock@swcenter.edu
Visit our website: <http://www.swcenter.edu>

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MEMORANDUM

TO: **Sara Wilson**, Director
Department of Human Resource Management

Dan Timberlake, Director
Department of Planning and Budget

FROM: **David N. Matlock**, Executive Director/Agency Head
Southwest Virginia Higher Education Center

DATE: **November 10, 2017**

RE: **WTA Exemption Request**

The purpose of this memo is to request that the Southwest Virginia Higher Education Center be exempted from paying costs to the Virginia Retirement System for any enhanced retirement benefits provided for in §2.2-3204(A) of the Code of Virginia for employees who are involuntarily separated from employment as a result of budget reductions enacted in the Appropriation Act.

Below you will find a summary of our proposed plan which will allow the agency to increase efficiency of operations and improve services to our region while addressing budget shortfalls. This will allow the agency to develop additional educational programs/services to build and strengthen our region's workforce. I have attached supporting documentation as outlined below.

This plan was approved by the executive committee of the Southwest Virginia Higher Education Center's Board of Trustees and, as a result of its implementation, the following three people would be eligible for the VRS enhanced retirement benefit:

- | | | |
|----------------------------------|-----------------|---------------------|
| • Chief Financial Officer | William Carmack | Enhanced Retirement |
| • Director of Operations | Joyce Brooks | Enhanced Retirement |
| • Conference Services Specialist | Janet Williams | Enhanced Retirement |

Supporting Attachments:

1. Budget Reduction and Restructuring Proposal

Southwest Virginia Higher Education Center

Budget Reduction and Restructuring Proposal

Due to budgetary shortfalls in the Commonwealth, the Southwest Virginia Higher Education Center has experienced budgetary reductions of **\$108,058.00** (5%) for 2016-2017 and another **\$108,058.00** (5%) for 2017-2018. These mandated reductions over the last two budget cycles, coupled with certain organizational changes that are vital, have resulted in the need to examine the work performed within the agency in order to leverage resources and find efficiencies to position the Center for the future. In order to address the organizational changes needed and identify potential improvements in efficiency, the agency conducted a thorough evaluation of 1) productivity, 2) departmental budgets, 3) stewardship, and 4) program development and support. As part of this process, the agency considered whether there were positions and/or duties that either could be or needed to be eliminated or reassigned. After completing this thorough evaluation, and in consultation with senior members of the leadership team and the Executive Committee of the Southwest Virginia Higher Education Center Board of Trustees, the following reductions/adjustments are necessary to remain responsive to regional needs and required fiscal accountability.

Job Abolishment/Layoff Analysis

As its first step in determining potentially impacted positions that may need to be abolished, the agency exercised the option of assessing whether any employees were willing to agree to accept layoff. The agency approached the following employees, who had previously expressed an interest in retiring in the near future: Joyce Brooks, Program Administration Manager I (full-time classified employee), and Janet Williams, Public Relations and Marketing Specialist II (full-time classified employee). Both employees stated they are willing to be identified as voluntary layoffs. Therefore, these two positions will be abolished.

As the second step in ascertaining potentially impacted positions, the agency conducted an assessment of whether there was (1) work that has been assigned to a particular position that is no longer being performed or needed, and/or (2) any duplication of duties/services being performed. The agency concluded that the Financial Services Manager II role was created in 2012 to do work that is no longer needed. For example, the position was created in part to develop the Energy Research Center and secure tenants that are involved in the research, manufacture and/or development of "Clean Fuel Energy" products and systems. A long-term lease was secured in March 2017 to a non-research client (medical practice) with the lease being managed by the Southwest Virginia Higher Education Center Foundation. The position was also designed to secure R&D grants to develop early-stage, growth-oriented, investment-worthy technology companies to rural southwestern and southern Virginia. The portfolio of research grants (which are all managed by the Foundation) is declining. Currently, the General Administration Manager I position oversees the majority of the business operations of the center by performing advanced fiscal bookkeeping, accounting and budgeting, along with managing accounts payables, receivables, and purchases. Therefore, the agency determined that day-to-day operations can be managed by a Financial Services Manager I position, which will provide the Center an opportunity to enhance efficiencies and become better positioned to seek other opportunities to complete its mission. Consequently, the agency has decided to abolish the Financial Services Manager II position.

Workforce Reorganization

Abolishment of the Financial Services Manager II position. The General Administration Manager I position will be upgraded to a Financial Services Manager I. This position will serve as a Controller for the Center and oversee all Business Office Operations, in addition to the budget and accounting operations. The person who will fill this role is Debbie Hensley, who has greater seniority than Mr. Carmack (she has 12 years of continuous salaried state service). **Net Yearly Savings to Budget = \$154,276**

Abolishment of the Program Administration Manager I position. This is one of the voluntary positions described above. Opportunities to increase efficiencies exist in this department due to enhanced technology, coupled with the shift of HR processes along with declining work for the department. Existing duties/responsibilities will be distributed to three current classified employees. The positions of these three employees will be upgraded to reflect the additional responsibilities. **Net Yearly Savings to Budget = \$44,366**

Abolishment of Public Relations and Marketing Specialist II position. This is one of the voluntary positions described above. The agency will reallocate the duties of this position to two current classified employees, who will now have a renewed emphasis on customer service and new customer acquisition. **Net Yearly Savings to Budget = \$20,751**

The Marketing Director position will be filled. This position has been frozen for the past three years. However, the agency has decided that this position is vital to increase Center awareness to students, and to facilitate connections between the Center and college partners located at the Southwest Virginia Higher Education Center. The Center needs to begin with an assessment of its existing brand identity and existing brand image in the minds of the institution's various constituencies. This position will work closely with prospective students and their families, alumni, faculty, staff, donors, community leaders, educational partners, and in some cases our state legislators. Having an effective marketing and branding strategy is key to ensure the Center is meeting the workforce needs of the region. **Net Yearly Cost to Budget = \$70,000**

Creation of a part-time Grant Writer position. In order to grow the Center and serve the region effectively, the Center will create a part-time Grant Writer position. In addition to writing grants for the Center, this person will conduct foundation and corporate research; identify private, corporate, and government grant opportunities; write letters of inquiries and proposals to prospective funding entities; be responsible for the oversight, development, implementation, management, and procurement of external funding sources; work closely with the Center's partners and undertake other assignments at the discretion of the Executive Director/Agency Head. This position will focus on securing funds for the development of educational programs/services to build and strengthen the region's workforce. **Net Yearly Cost to Budget = \$41,355**

SUMMARY

After careful evaluation with senior members of the Southwest Virginia Higher Education Center's leadership team, and in consultation with the Executive Committee of the Southwest Virginia Higher Education Center Board of Trustees, it is evident that this workforce restructuring is necessary to address budget shortfalls and to ensure the Center is prepared to meet the regional educational needs. This reorganization will increase the Center's ability to focus on securing grants and improving the

programs necessary to become more responsive to the region's workforce, creating a greater ROI for the Commonwealth and the citizens of Southwest Virginia. As a result, the Southwest Virginia Higher Education Center proposes these reductions and adjustments in order to better position the Center for the future and to be more effective and efficient in carrying out its duties and responsibilities.

Total Net Savings to Budget = \$108,058.00

Positions Eliminated = 3

Position unfrozen = 1

Position created = 1 (part-time)

Exhibit 2

Beaner, Delilah

From: Henken, Adam <adam.henken@dpb.virginia.gov>
Sent: Tuesday, May 08, 2018 10:48 AM
To: David Matlock
Subject: WTA
Attachments: SWVHEC wta final 11-2017.pdf

David,

A copy of the signed letter is attached.

Adam

Adam Henken

Budget and Policy Analyst

Virginia Department of Planning and Budget

1111 E. Broad Street

Richmond, VA 23219

(804)786-8092



COMMONWEALTH of VIRGINIA

Department of Planning and Budget

DANIEL S. TIMBERLAKE
Director

1111 E. Broad Street
Room 5040
Richmond, VA 23219-1922

COPY

November 21, 2017

Mr. David Matlock, Executive Director
Southwest Virginia Higher Education Center
One Partnership Circle
Abingdon, Virginia 24212

Dear Mr. Matlock:

I have reviewed your request to be exempted from paying to the Virginia Retirement System (VRS) for costs associated with enhanced retirement benefits of three eligible Southwest Virginia Higher Education Center staff who were involuntarily separated from employment pursuant to the Workforce Transition Act (WTA).

The positions in question meet the criteria of Item 475, paragraph M.1. of Chapter 836, 2017 Acts of Assembly; specifically, these separations are a result of budget reductions enacted in the Appropriation Act. Therefore, if the Director of the Department of Human Resource Management finds that these involuntary separations are consistent with personnel policy, VRS will be responsible for the associated costs of any retirements that result from the involuntary separations.

Please let me or Mr. Michael Maul of my staff know if you have any questions concerning this issue.

Sincerely,

Daniel Timberlake

c: The Honorable Richard D. Brown
Ms. Patricia Bishop
Mrs. Sara Wilson
Mr. Michael Maul